such cases? Is there no fundamental distinction between a forged indorsement and a forged drawing as affecting the rights between the drawee and the innocent indorsee to whom he has paid the bill? In *The London & River Plate Bank* v. *The Bank of Liverpool*, [1896] 1 Q. B. 7, Mathew, J. rests the two cases on the same grounds, and decides that the drawee who pays the innocent indorsee of a bill bearing a forged indorsement cannot recover back the money, on the principle that the payment by the drawee has caused the indorsee to lose his rights against prior indorsers. Undoubtedly the defendant can no longer charge prior parties as indorsers, as the time for notice of dishonor has gone by, but his rights on the warranty, implied in the sale of any chattel, remain unimpaired (2 Ames, Cases on Bills and Notes, 242, n. 1), and it is doubtful if it is of itself any defence to one who has received money under a mistake of fact, there having been a total failure of consideration, that his rights against other parties have been changed or his relations in respect to them altered. *Bobbitt* v. *Pinkett*, L. R. 1 Ex. Div. 368; *Canal Bank* v. *Bank of Albany*, 1 Hill, 291; *Rheel* v. *Hicks*, 25 N. Y. 289; *Koonzt* v. *Central National Bank*, 51 Mo. 275. It is said further, that "no single case has been produced in which, where payment has been made on a forged indorsement to the holder of it in good faith, the money has been recovered back." It is rather unfortunate that in so important a case the attention of the court was not called to *Bobbett* v. *Pinkett*, *supra*, a decision which is very difficult to reconcile with the principal case. The American cases in which such recovery has been allowed are collected in 1 Ames, Cases on Bills and Notes, 433, n. 2.

In *Price* v. *Neal*, 3 Burr. 1354, it will be remembered that it was the drawer's name that was forged, and it was held that the drawee, having paid an innocent indorsee, must himself bear the loss. But the distinction between such a case and one where an indorsement is forged is obviously that in the latter case the indorsee has never obtained legal title to the instrument, and, however innocent he may be, he is immediately liable at law to the true owner for the conversion. This principle is expressly recognized in *Bobbett* v. *Pinkett*, *supra*. If, as in the principal case, the drawee has paid the true owner, it would seem that the drawee should be subrogated to his rights and be enabled to compel the indorsee to account for the money received to his use. The whole subject is elaborately discussed in 4 HARVARD LAW REVIEW, 297.

It is to be hoped that the solution of a question of so much importance will not be left to depend on the authority of a single justice of the divisional court, but that the case will be carried up to the higher courts.

THE "TRUST FUND" THEORY. — In the late case of *Adams & Westlake* v. *Deyette* (65 N. W. Rep. 471), the Supreme Court of South Dakota rests its decision on the ground "that the assets of a corporation are a trust fund for its creditors." On this theory a judgment confessed by a corporation for money due on an executed *ultra vires* contract, admitted to give a right of action for the sum recovered, was set aside as a preference of creditors. The "trust fund" doctrine seems to owe its origin to a decision by Judge Story in 1824, in the case of *Wood* v. *Dummer* (3 Mas. 308). Since that decision it has been alternately applied and rejected by courts and eulogized and condemned by text writers. Within the last two years Judge Thompson has characterized it as "the only doctrine worthy

of respect," and the Supreme Courts of Indiana, North Carolina, and Alabama have distinctly repudiated it, the latter overruling a number of cases where its existence had been recognized. See 5 Thompson on Corporations, 5115; *Bank of Crawfordsville* v. *Dovetail &c. Co.*, 40 N. E. Rep. 810 (Ind.); *Thomson-Houston Co.* v. *Henderson Co.*, 21 S. E. Rep. 951 (N. C.); *Jewelry Co.* v. *Volfer*, 17 So. Rep. 525 (Ala.).

Just what the doctrine is, even those who uphold it do not seem to know. It seems to be an accommodating judicial *ignis fatuus*, which is present or absent as courts seem to require. No court has been able to describe it exactly or to define its limits. It is admitted that there is no trust in the strict sense of the term. But these admissions tend to still greater confusion. The logical conclusion of holding that there was a strict trust would be that the creditor of an insolvent corporation could not enforce his claim at law. When this argument was pressed on the court in *Gottlieb* v. *Miller* (154 Ill. 44), they qualified their previous statement by holding that there was a "quasi trust" only. The United States Supreme Court has long been committed to the "trust fund" doctrine, yet in the recent case of *Hollins* v. *Brierfield &c. Co.* (150 U. S. 371) Justice Brewer practically admits that the expression is figurative; and Justice Bradley, in *Graham* v. *R. R. Co.* (102 U. S. 148), while upholding the doctrine, is forced to acknowedge that "if pushed to its logical conclusion, it would lead to results not to be tolerated," and yet he does not seem able to define the limits within which it will be tolerated.

This general haziness that surrounds the whole doctrine leaves the student in a confused state of uncertainty as to what the doctrine really is. Mr. Pepper, however, in a recent able article (2 Am. Law. Reg. & Rev., N. S. 448), clears up much of this uncertainty. He deprecates the use of the expression "trust fund" as a misleading misnomer, and suggests that the courts have used it as a cover for judicial legislation. The cases seem to justify this view, and it must be admitted that justice often demands legislation by the courts in dealing with insolvent corporations.

RECENT CASES.

ADMIRALTY — RECOVERY FOR DEATH BY WRONGFUL ACT. — Where a State statute gives the personal representative of one killed by the negligent handling of a vessel a right of action, and makes any damages that may be recovered a lien upon such vessel, *held*, a suit may be maintained in the Federal courts to enforce such right of action. *The Willamette*, 70 Fed. Rep. 874.

It has been frequently argued that there can be no recovery in suits of this kind, on the ground that there is no action given by general maritime law, and it is not competent for a State to alter this. But statutes giving a recovery exist in some thirty States, and their validity has been upheld in *Sherlock* v. *Alling*, 93 U. S. 99. An elaborate review of the authorities is found in *The City of Norwalk*, 55 Fed. Rep. 98.

BILLS AND NOTES — FICTITIOUS PAYEE. — A clerk of the plaintiffs represented to them that they were indebted to B., and they drew a check to the order of B. in payment. There was no such person as B., and the clerk indorsed the check to the defendant, a *bona fide* purchaser, who received payment from the bank. In an action for the money, it was *held*, that the check was payable to bearer, and there could be no recovery against the defendant, a holder in due course. *Clutton* v. *Attenborough*, [1895] 2 Q. B. 707.

This affirms the judgment of Wills, J., [1895] 2 Q. B. 306. The Bills of Exchange Act, 1882, provides that where the payee is fictitious the bill may be treated as payable